

ESTTA Tracking number: **ESTTA264666**

Filing date: **02/04/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	iLike, inc.
Granted to Date of previous extension	02/04/2009
Address	1605 Boylston Ave., Suite 202 Seattle, WA 98122 UNITED STATES
Attorney information	Rochelle D. Alpert Morgan, Lewis & Bockius LLP One Market, Spear Street Tower San Francisco, CA 94105 UNITED STATES ralpert@morganlewis.com, lwilbur@morganlewis.com, gdoughtie@morganlewis.com Phone:415.442.1326

Applicant Information

Application No	77465234	Publication date	10/07/2008
Opposition Filing Date	02/04/2009	Opposition Period Ends	02/04/2009
Applicant	DHC Assets Limited Partnership P.O. Box 1416 La Jolla, CA 92038 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: Book publishing; Magazine publishing; Multimedia publishing of books, magazines, journals, software, games, music, and electronic publications; Online electronic publishing of books and periodicals; Publishing of books and reviews; Publishing of electronic publications; Publishing of web magazines


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2521615	Application Date	07/22/1999
Registration Date	12/25/2001	Foreign Priority Date	NONE

Word Mark	GARAGEBAND.COM
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 041. First use: First Use: 1999/03/19 First Use In Commerce: 1999/09/30 Recording and production of all types of multimedia, namely compaq discs, downloadable music files, [videos, audiocassettes films, and downloadable video files]</p> <p>Class 042. First use: First Use: 1999/03/19 First Use In Commerce: 1999/09/30 consumer product rating services provided via a global computer network, namely, rating and identifying all types of multimedia products for production and distribution</p>

U.S. Application No.	78378063	Application Date	03/03/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GARAGEBAND		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1999/09/00 First Use In Commerce: 1999/09/00 Musical sound recordings, musical video recordings, prerecorded compact discs, prerecorded electronic media, namely, DVDs, audio tapes, MP3s featuring recorded music and recorded music video featuring musical performances; downloadable musical sound recordings; downloadable musical video recordings; downloadable electronic publication in the nature of a newsletter on music, musicians, musical artists, musical technology, song writing and entertainment</p> <p>Class 035. First use: First Use: 2000/03/00 First Use In Commerce: 2000/03/00 Consulting services in the fields of music promotion and distributorship in the field of prerecorded music; management advice services for musical artists and musicians; online retail store services in the field of music; promoting the goods and services of others in the music and entertainment fields by transmission and dissemination of advertising materials over the Internet</p> <p>Class 038. First use: First Use: 2000/04/00 First Use In Commerce: 2000/04/00 Providing online electronic bulletin boards and chat rooms for transmission of messages among musicians and music fans about music, musicians, musical technology, song writing, musical artists and entertainment; consulting services in the field of music distribution, namely, transmission of music over the Internet</p> <p>Class 041. First use: First Use: 1999/09/00 First Use In Commerce: 1999/09/00 Entertainment services, namely, conducting interactive contests between musicians, providing reviews and ratings of musicians and music; providing a</p>		

	<p>calendar of live music events; providing prerecorded music and music videos all on-line via a global computer network; providing on-line commentary and information about musical artists, musical technology, musicians, music and entertainment; providing radio programming; consulting services in the fields of musical production, musical recording, song writing, and production and distribution of music over the Internet</p> <p>Class 042. First use: First Use: 2000/04/00 First Use In Commerce: 2000/04/00</p> <p>Computer services, namely, hosting, creating, implementing and managing web sites for others on a computer server for a global computer network; providing temporary on-line use of non-downloadable computer software for musicians to promote and distribute music, to calendar events and to create web sites; providing for the uploading of music for transmission over the Internet</p>
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Garageband; garageband.com		
Goods/Services	As described in the attached Opposition.		

Attachments	<p>78378063#TMSN.jpeg (1 page)(bytes)</p> <p>Notice of Opposition (Exh.A, and Proof of Service) - Docket 061442-9900.pdf (12 pages)(392448 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/RDA/
Name	Rochelle D. Alpert
Date	02/04/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/465,234
Filed May 4, 2008
For the mark **GARAGE BRAND**
Published in the OFFICIAL GAZETTE on October 7, 2008

iLike, Inc.,

Opposer,

v.

DHC Assets Limited Partnership,

Applicant.

NOTICE OF OPPOSITION

iLike, Inc. (“iLike” or “Opposer”), a California corporation, having its principal place of business at 1605 Boylston Ave., Suite 202, Seattle, Washington 98122, believes it will be damaged by the registration of the mark shown in Serial No. 77/456,234, and hereby opposes same.

As grounds for the opposition, it alleges as follows:

1. For nearly a decade, iLike and its predecessors in interest, have provided a wide range of services related to music and music creation, sharing, rating, distributing, promotion and posting online under its GARAGEBAND.COM mark. iLike and its predecessors in interest have used the GARAGEBAND mark since 1999 for a variety of music-related goods and services,

including but not limited to the publication of music. Since 1999, GARAGEBAND has been and is used as a domain name and mark.

2. Opposer has long owned and used the garageband.com domain name which features music downloads and the publication of music for others, and other music-related goods and services.

3. Opposer owns an incontestable federal trademark registration for the mark GARAGEBAND.COM (Reg. No. 2521615) for “recording and production of all types of multimedia, namely compaq discs, downloadable music files;” and “consumer product rating services provided via a global computer network, namely, rating and identifying all types of multimedia products for production and distribution.” Opposer, through its predecessors in interest, has been using its GARAGEBAND.COM mark since at least as early as September 30, 1999. A true and correct copy of the TARR status report and assignment information for this registration is attached hereto as Exhibit A.

4. Opposer also owns a pending federal use trademark application for the mark GARAGEBAND (Ser. No. 78/378,063) for:

- a. “musical sound recordings, musical video recordings, prerecorded compact discs, prerecorded electronic media, namely, DVDs, audio tapes, MP3s featuring recorded music and recorded music video featuring musical performances; downloadable musical sound recordings; downloadable musical video recordings; downloadable electronic publication in the nature of a newsletter on music, musicians, musical artists, musical technology, song writing and entertainment;
- b. consulting services in the fields of music promotion and distributorship in the field of prerecorded music; management advice services for musical artists and

musicians; online retail store services in the field of music; promoting the goods and services of others in the music and entertainment fields by transmission and dissemination of advertising materials over the Internet;

- c. providing online electronic bulletin boards and chat rooms for transmission of messages among musicians and music fans about music, musicians, musical technology, song writing, musical artists and entertainment; consulting services in the field of music distribution, namely, transmission of music over the Internet;
- d. entertainment services, namely, conducting interactive contests between musicians, providing reviews and ratings of musicians and music; providing a calendar of live music events; providing prerecorded music and music videos all on-line via a global computer network; providing on-line commentary and information about musical artists, musical technology, musicians, music and entertainment; providing radio programming; consulting services in the fields of musical production, musical recording, song writing, and production and distribution of music over the Internet; and
- e. computer services, namely, hosting, creating, implementing and managing web sites for others on a computer server for a global computer network; providing temporary on-line use of non-downloadable computer software for musicians to promote and distribute music, to calendar events and to create web sites; providing for the uploading of music for transmission over the Internet.”

This application was filed on March 3, 2004, well before the filing of the opposed application, and the mark has been in use for nearly a decade in connection with the covered goods and services.

5. Opposer's GARAGEBAND.COM and GARAGEBAND music-related products and services have received widespread publicity in publications such as *The New York Times*, *Business Week* and *USA Today*. Indeed, even in 2003, *Time Magazine* recognized GARAGEBAND.COM as one of the 50 Best Web Sites.

6. Since 1999, dozens of music bands have received recording deals after their music was featured through Opposer's GARAGEBAND.COM and GARAGEBAND products and services. Additionally, musical groups have obtained publishing, production, or licensing deals from the exposure of their music through Opposer's GARAGEBAND.COM and GARAGEBAND products and services. More than 250,000 musical groups are featured using Opposer's GARAGEBAND.COM and GARAGEBAND products and services. Through a partnership with various radio stations, music from Opposer's GARAGEBAND.COM and GARAGEBAND products and services is featured on over 1,000 radio stations.

7. Through extensive and longstanding use, iLike's GARAGEBAND.COM and GARAGEBAND marks have become identified exclusively with Opposer for its music-related products and services, and Opposer has developed substantial goodwill in its GARAGE BAND mark during its near decade of use.

8. By application number 77/ 465,234, herein opposed, Applicant DHC Assets Limited Partnership ("Applicant") seeks to register on an intent-to-use basis the mark GARAGE BRAND for "Book publishing; Magazine publishing; Multimedia publishing of books, magazines, journals, software, games, music, and electronic publications; Online electronic publishing of books and periodicals; Publishing of books and reviews; Publishing of electronic publications; Publishing of web magazines." The opposed intent-to-use application was filed on

May 4, 2008, and published on October 7, 2008. Opposer timely filed a request for extension of time to oppose the application.

9. The mark for which Applicant seeks registration, GARAGE BRAND, is virtually identical in sight, sound and meaning to Opposer's well-known GARAGEBAND.COM and GARAGEBAND marks. The GARAGE BRAND and GARAGEBAND marks, differ only slightly in spelling—with Applicant's mark having an additional letter "r." Any difference is nearly imperceptible audibly, by sight or in meaning. Additionally, the .COM portion of Opposer's GARAGEBAND.COM mark, is not a material difference or a dominant element, that impacts the high degree of similarity of the marks of the respective parties.

10. The services for which Applicant seeks registration appear to be targeted to the same customers and promoted through the same channels of trade as the goods and services offered by Opposer under its GARAGEBAND.COM and GARAGEBAND marks.

11. Applicant's proposed GARAGE BRAND services are competitive with, or at the very least, related to Opposer's goods and services offered under its GARAGEBAND.COM and GARAGEBAND marks.

12. Because Applicant's proposed GARAGE BRAND mark is virtually identical to Opposer's incontestable GARAGEBAND.COM mark and its GARAGEBAND mark, Applicant's proposed GARAGE BRAND services compete with and/or are closely related to Opposer's goods and services, and the prospective customers and marketing channels overlap substantially, Applicant's proposed mark is likely to cause confusion, or to cause mistake, or to deceive or disparage by falsely suggesting a connection with or otherwise damaging Opposer.

WHEREFORE, Opposer prays that application Serial No. 77/465,234 be rejected, that no registration be issued thereon to Applicant and that this opposition be sustained in favor of Opposer.

Although Petitioner will authorize the required \$300 fee to be charged to its deposit account through the TTAB online filing system (ESTTA), Opposer hereby authorizes the charge of any and all fees to institute this Opposition to Deposit Account No. 13-4520.

Dated: February 4, 2009

Respectfully submitted,

By: /rda/
Rochelle D. Alpert

Rochelle D. Alpert
Sharon R. Smith
Morgan, Lewis & Bockius LLP
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Attorneys for Opposer, iLike, Inc.

EXHIBIT A

TO NOTICE OF OPPOSITION (Serial No. 77/465,234)

**EXHIBIT A
PAGE 1 OF 5**

**iLike, Inc. v. DHC Assets Limited Partnership
Serial No.: 77/465,234
Submitted by: iLike, Inc. (Opposer)**

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-02-04 19:46:28 ET

Serial Number: 75757323 Assignment Information Trademark Document Retrieval

Registration Number: 2521615

Mark (words only): GARAGEBAND.COM

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2007-12-12

Filing Date: 1999-07-22

Transformed into a National Application: No

Registration Date: 2001-12-25

Register: Principal

Law Office Assigned: LAW OFFICE 104

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-12-12

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. ILIKE, INC.

Address:

ILIKE, INC.
1605 BOYLSTON AVE., SUITE 202
SEATTLE, WA 98122
United States

Legal Entity Type: Corporation

State or Country of Incorporation:(NOT AVAILABLE)

GOODS AND/OR SERVICES

International Class: 041

Class Status: Active

Recording and production of all types of multimedia, namely compaq discs, downloadable music files

Basis: 1(a)

First Use Date: 1999-03-19

First Use in Commerce Date: 1999-09-30

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=75757323>

2/4/2009

**EXHIBIT A
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International Class: 042

Class Status: Active

consumer product rating services provided via a global computer network, namely, rating and identifying all types of multimedia products for production and distribution

Basis: 1(a)

First Use Date: 1999-03-19

First Use in Commerce Date: 1999-09-30

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-12-12 - Section 8 (6-year) accepted & Section 15 acknowledged

2007-05-08 - Assigned To Paralegal

2007-04-09 - Section 8 (6-year) and Section 15 Filed

2007-04-20 - Case File In TICRS

2007-04-11 - Automatic Update Of Assignment Of Ownership

2007-04-09 - TEAS Section 8 & 15 Received

2001-12-25 - Registered - Principal Register

2001-10-02 - Published for opposition

2001-09-12 - Notice of publication

2001-05-02 - Approved for Pub - Principal Register (Initial exam)

2001-03-26 - Communication received from applicant

2001-04-12 - Previous action count withdrawn

2000-07-12 - Non-final action mailed

2000-04-12 - Communication received from applicant

2000-06-17 - Amendment to use processing complete

**EXHIBIT A
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Latest Status Info

2000-04-18 - Amendment to Use filed

1999-10-29 - Non-final action mailed

1999-10-26 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Rochelle D. Alpert

Correspondent

Rochelle D. Alpert

Morgan. Lewis & Bockius LLP

One Market, Spear Street Tower

San Francisco CA 94105

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EXHIBIT A
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Assignments on the Web > Trademark Query

Trademark Assignment Abstract of Title

Total Assignments: 2**Serial #:** [75757323](#)**Filing Dt:** 07/22/1999**Reg #:** 2521615**Reg. Dt:** 12/25/2001**Registrant:** garageband.com**Mark:** GARAGEBAND.COM**Assignment: 1****Reel/Frame:** 2562/0821**Received:** 08/15/2002**Recorded:** 08/09/2002**Pages:** 5**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** [GARAGEBAND.COM](#)**Exec Dt:** 07/31/2002**Entity Type:** CORPORATION**Citizenship:** CALIFORNIA**Entity Type:** CORPORATION**Citizenship:** CALIFORNIA**Assignee:** EVOLUTION ARTISTS INC.

3011 BAKER STREET

SAN FRANCISCO, CALIFORNIA 94123

Correspondent: COBLENTZ, PATCH, DUFFY ET AL.

NALE A. GARHART

222 KEAMY STREET, 7TH FLOOR

SAN FRANCISCO, CA 94108-4510

Assignment: 2**Reel/Frame:** 3513/0854**Received:** 04/03/2007**Recorded:** 04/03/2007**Pages:** 6**Conveyance:** CHANGE OF NAME**Assignor:** ILIKE, INC.**Formerly:** FORMERLY EVOLUTION ARTISTS, INC.**Exec Dt:** 03/26/2007**Entity Type:** CORPORATION**Citizenship:** NONE**Entity Type:** CORPORATION**Citizenship:** NONE**Assignee:** ILIKE, INC.

1605 BOYLSTON AVE., SUITE 202

SEATTLE, WASHINGTON 98122-6733

Correspondent: ROCHELLE D. ALPERT

ONE MARKET, SPEAR STREET TOWER

SAN FRANCISCO, CA 94105

Search Results as of: 02/04/2009 07:46 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.
Web interface last modified: October 18, 2008 v.2.0.2

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EXHIBIT A
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CERTIFICATE OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is One Market, Spear Street Tower, San Francisco, CA 94105.

On **February 4, 2009**, I served the within documents:

NOTICE OF OPPOSITION (Exhibit A)



(BY MAIL) I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Morgan, Lewis & Bockius LLP, San Francisco, California. I am readily familiar with the firm's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.



(BY OVERNIGHT DELIVERY) I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Morgan, Lewis & Bockius LLP, San Francisco, California. I am readily familiar with the firm's practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery the same day as the correspondence is placed for collection.



(BY FACSIMILE) I caused the document(s) listed above to be transmitted by facsimile to the fax number(s) set forth above on this date before **5:00 p.m.** The facsimile transmission(s) was reported as complete and without error.

DANA B. ROBINSON
DANA ROBINSON & ASSOCIATES
P.O. BOX 1416
LA JOLLA, CA 92038-1416

Executed on **February 4, 2009**, at San Francisco, California. I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.


Yelena Lolua